

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

ORDER

On January 7, 2010, United States Magistrate Judge Valerie K. Couch issued a Report and Recommendation, wherein she recommended the following motions be denied:

1. Plaintiff's Motion for Preliminary Injunction (doc. no. 120);
2. Non-Resident Defendants' Motion to Dismiss (doc. no. 135);
3. Plaintiff's Motion for Reconsideration (doc. no. 139); and
4. Plaintiff's Motion for Leave to Amend Complaint (doc. no. 165).

In the Report and Recommendation, Magistrate Judge Couch advised the parties of their right to file objections within 14 days after being served with a copy of the Report and Recommendation and their right to respond to another party's objections within 14 days after being served with a copy of the objections. The Report and Recommendation further advised that failure to make timely objection to the Report and Recommendation waives the right to appellate review of the factual and legal issues therein addressed.

On February 11, 2010, defendants filed an objection to the Report and Recommendation, challenging Magistrate Judge Couch's finding that sovereign immunity does not bar plaintiff's Motion for Preliminary Injunction. In addition, on February 11, 2010, plaintiff filed an objection to the Report and Recommendation, challenging Magistrate Judge Couch's finding that plaintiff had failed to meet his burden of proof in regard to Plaintiff's Motion for Preliminary Injunction. No responses have been filed.

In accordance with 28 U.S.C. § 636(b)(1), the court has conducted a *de novo* review of those portions of the Report and Recommendation to which an objection has been lodged.¹ Having done so, the court concurs with the analysis of Magistrate Judge Couch in regard to Plaintiff's Motion for Preliminary Injunction. The court finds no purpose in repeating that analysis here. The court therefore accepts, adopts and affirms the Report and Recommendation in regard to Plaintiff's Motion for Preliminary Injunction.

As plaintiff has not objected to the Report and Recommendation as to Magistrate Judge Couch's rulings in regard to Plaintiff's Motion for Reconsideration and Plaintiff's Motion for Leave to Amend Complaint and defendants have not objected to Magistrate Judge Couch's ruling in regard to Non-Resident Defendants' Motion to Dismiss, the court also accepts, adopts and affirms the Report and Recommendation in regard to those motions.

¹ Although the court has conducted a *de novo* review, the court has not considered any legal arguments presented by plaintiff in his objection which were not presented to Magistrate Judge Couch in his briefing papers. Arguments not raised before Magistrate Judge Couch are deemed waived. *See, Marshall v. Chater*, 75 F.3d 1421, 1426 (10th Cir. 1996) ("Issues raised for the first time in objections to the magistrate judge's recommendation are deemed waived.")

IT IS THEREFORE ORDERED that the Report and Recommendation of United States Magistrate Judge Valerie K. Couch issued on January 10, 2010 (doc. no. 166) is **ACCEPTED, ADOPTED** and **AFFIRMED**.

IT IS ALSO ORDERED that Plaintiff's Motion for Preliminary Injunction (doc. no. 120), Plaintiff's Motion for Reconsideration (doc. no. 139), and Plaintiff's Motion for Leave to Amend Complaint (doc. no. 165), are **DENIED**.

IT IS FURTHER ORDERED that Non-Resident Defendants' Motion to Dismiss (doc. no. 135) is **DENIED**.

DATED February 26, 2010.



STEPHEN P. FRIOT
UNITED STATES DISTRICT JUDGE

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